



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 15, 1998

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR98-0132

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112408.

The Texas Department of Health (the "department") received a request for information concerning a certain complaint against the McCuistion Regional Medical Center, Complaint No. 96-50229. You assert that portions of the requested information are excepted from required public disclosure based on section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential by law, including information made confidential by judicial decision, the constitution, and by statute. You raise two statutes as well as the common-law right to privacy.

Section 552.101 encompasses information that is confidential pursuant to the common-law right to privacy.<sup>1</sup> However, common-law privacy rights lapse upon the death of the subject. *See* Open Records Decision No. 455 (1987) at 5. The patient involved in the incident is deceased. Thus, the patient's privacy rights have lapsed. Furthermore, we do not believe the release of the information implicates the privacy rights of any other individual referenced in the complaint file. Thus, the department may not withhold any portion of the information based on section 552.101 in conjunction with the common-law right to privacy.

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<sup>1</sup>*Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The first statute the department raises for portions of the information is the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b, section 5.08(b). This provision provides confidentiality for "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." We agree that portions of the requested information consist of information obtained from confidential medical records. Thus, the department must release this information in accordance with the MPA. Open Records Decision Nos. 598 (1991), 546 (1990); *see* V.T.C.S. art. 4495b §§ 5.08 (c), (j), (k). We have marked the documents accordingly.

The second statute the department raises is section 161.032(a) of the Health and Safety Code, which makes confidential the "records and proceedings of a medical committee." "Medical committee" includes any committee of, among other entities, a hospital. Health and Safety Code § 161.031. You raise section 161.032(a) for information that appears to have been obtained from the hospital's minutes of a medical staff committee. You state that portions of the documents are records of a proceeding of a medical committee. We agree and have marked the documents accordingly.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/rho

Ref.: ID# 112408

Enclosures: Marked documents

cc: Mr. David M. Kennedy  
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(w/o enclosures)